IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 60 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

DHIJEN DARSHI FAMILY TRUST

Appearance:
MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 31/08/2000

ORAL JUDGEMENT (Per D.M. DHARMADHIKARI, C.J.)

1. As pointed out by the learned counsel appearing for the Department, by the decision in Income Tax Reference No. 379 of 1983 dated 2-5-1998, the questions quoted below referred to this Court in assessee's own case for earlier assessment years are answered in favour of the assessee and against the revenue:

"1.Whether, on the facts and in the circumstances of the case and on a true interpretation of the trust deed, the conclusion of the Appellate Tribunal that the assessee trust was a specific trust and not a discretionary trust as held by the Income-tax Officer is sustainable in law?"

2. Whether, on the facts and in the circumstances of the case, the assessment in the case of the assessee is not required to be made under the provisions of sec. 164 of the I.T. Act, 1961?"

3. Whether the finding of the Appellate Tribunal that the assessee trust is a specific trust and not a discretionary one is correct in law in view of clause 8(a) and 8(b) of the trust deed which gave discretionary power to the trust to distribute the income?"

3. The questions referred to us are, therefore, answered in favour of the assessee and aginst the revenue. A copy of the order dated 2-5-98 in Income Tax Refernece No. 379 of 1983 in the case of assessee's own case produced before us, is taken on record.

There shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(A.R. DAVE, J)

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